

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

KENNETH PAPINEAU and VERONICA
PAPINEAU, OLIVER HILL, and SUMMER
ROCKWELL,

Plaintiffs,

vs.

JOHN DILLON, individually, and as
Sheriff of Onondaga County and THE
COUNTY OF ONONDAGA,

Defendants.

INTRODUCTION

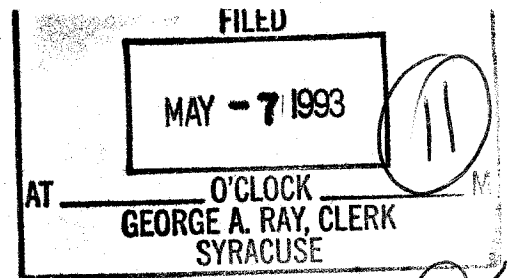
Initial oral argument was had in relation to Plaintiffs' motion for a preliminary injunction and Defendants' motion to dismiss, or in the alternative, make the Onondaga Nation a party. The Court heard initial oral argument and asked for:

1. The latest statement of the policy of the Onondaga County Sheriff's Department.
2. Briefs on the preliminary injunction issue.
3. Briefs on the indispensable party argument.

This is the Plaintiffs' response to the directive of the Court.

THE POLICY OF THE SHERIFF

The Court correctly characterized the issue for purposes of the first half of the preliminary injunction application: What is the policy of the Sheriff's Department with respect to the Onondaga



PLAINTIFFS' MEMORANDUM
CONCERNING MOTION TO
DISMISS \ MOTION TO DENY
PRELIMINARY INJUNCTION

Civil Action No.93-CV-491

ORIGINAL

Indian Territory? This is not a question of what agreements, if any, the Sheriff has made with the Onondaga Nation. The issue is: What is the policy? The answer is found in Mr. Gerber's affidavit. Notwithstanding this Court's adroit cross-examination of Mr. Gerber at motion term, the fact of the matter is that the policy proffered to this Court by the Defendant John Dillon contains the following concerning such policy:

1. "There shall be no normal patrol operations within the Onondaga Nation". [.03(a)]

2. "Pursuits of non-Indians may continue onto the Nation with permission of one of the Chiefs". [.03(b)]

3. "Pursuit of Nation inhabitants shall cease at the Nation boundary". [.03(b)]

4. With regard to calls for service, "A Nation Chief, as listed in § .07, will be asked for permission to respond onto the Nation". [.04(a)]

5. Concerning alarm calls, "The Chiefs will be notified for permission to continue. If permission is denied, patrols are to clear code 9 on an M.I.R. and return to routine patrol". [.04(b)].

6. With regard to any call for service, "If permission to respond onto the Nation is denied, the complainant shall be notified and asked to meet with a deputy off the Nation to report for the complaint". [.04, last unlettered paragraph]

7. "A Nation Chief shall be contacted for permission before a follow-up investigation on the Nation commences". [.05]

Several things become apparently clear from reading the policy:

1. It discriminates in terms of police protection between "non-Indians" and "Indians".

2. It discriminates in terms of police protection with respect to "Nation inhabitants".

3. It discriminates in terms of police protection with respect to a geographic area predominantly comprised of one racial group. (Counsel for the Plaintiffs will be providing the Court with additional legal authority on this point).

If permission is denied, there is no police protection.

THE INDISPENSABLE PARTY ARGUMENT

The Defendants claim that pursuant to Rule 19(b) of the Federal Rules of Civil Procedure, this case either has to be dismissed or the Onondaga Nation must be made a party. They rely upon Fluent v. Salamanca Lease Authority. Plaintiffs submit, as was submitted at oral argument, that this argument holds no water for the following reasons:

1. The issue before the Court is a policy, not an agreement with the Onondaga Nation.

2. Even if a ruling by this Court in favor of the Plaintiffs would have an affect on the Onondaga Nation, it matters not

because the issue before the Court is the constitutionality of a policy. Either the policy is constitutional, or it is not. If it is, then whether or not the Onondaga Nation is a party is irrelevant.

3. If the Nation were to be made a party, the Nation would move to dismiss on sovereign immunity grounds as was conceded by the friend of the Court, Joseph Heath, Esq., who represents the Nation.

4. There could be no valid agreement which could be affected because the Sheriff has no authority to make any kind of agreement with an Indian tribe without the approval of the United States Government.

5. Finally, the Court is directed to the opinion of the Supreme Court, relied upon by Defendants, in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). With regard to the sovereignty observations relied upon by the Defendants, the Court is respectfully directed to the Plaintiffs' Memorandum of Law submitted in connection with the preliminary injunction motion. Moreover, the Sheriff has conceded that he has jurisdiction at the Territory. (Gerber affidavit). However, with regard to the right of an individual Indian to sue the State or Federal Governments, the Supreme Court stated in Santa Clara:

"...[W]hile exempting Indians tribes from constitutional provisions addressed specifically to the State or Federal Governments, of course, does not relieve State and Federal Governments of their obligations to

individual Indians under these provisions".
Santa Clara Pueblo v. Martinez, 436 U.S.
at 56 n.7.

THE MERITS

It is clear that the Defendants concede that the Sheriff has jurisdiction over crimes committed upon the Onondaga Nation Territory. (Gerber affidavit at paragraph 3). We also know what the policy is.

In addition to Judge Munson's decision in Thompson v. State, 487 F.Supp. 212, 227 (NDNY 1979), Plaintiffs also rely upon Balistreri v. Pacifica Police Department, 855 F.2d 1421, 1427 (9th Cir. 1988) and Watson v. Kansas City, 857 F.2d 690, 694 (10th Cir. 1988).

It is clear that:

1. The county has a policy of law enforcement with regard to the Onondaga Indian Territory that is different from its policy with respect to other areas of the county.
2. It is a written policy.
3. It is a policy based upon the status of the area as being inhabited by Indians and/or based upon the status of persons, defendants or complainants, being Indians.
4. It denies each resident, occupant or complainant, the equal protection of the laws.

5. It is based upon an impermissible classification.

IRREPARABLE HARM

The denial of a constitutional right may constitute irreparable harm per se. Bean v. Southwest Management, 482 F.Supp. 673 (SDTex 1979).

THE NEED FOR A HEARING

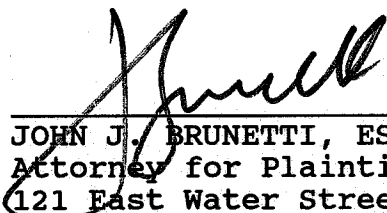
One of the issues before the Court on a preliminary injunction involves whether there is a substantial probability of prevailing on the merits. Counsel for the Plaintiffs submits that there is no need for a hearing on this issue. The policy is stated in black and white. The Court can make a determination as to whether or not there is a substantial probability of prevailing on the merits by reading that policy. The policy constitutes the Plaintiffs' proof based upon the affidavit submitted by Edward Gerber and the other submission in this case. Of course, if the Defendants wish to introduce proof, and the Court wishes to allow them, there is really nothing that the Plaintiffs can do other than show up and conduct cross-examination.

On the issue of irreparable harm, if the Court finds that there is a substantial probability of prevailing on the merits because the policy is unconstitutional, then the Plaintiffs rest on the doctrine that this Court cannot allow the continued deprivation of a constitutional right to continue. It, in and of itself, is so blatant a violation of the constitutional rights to the equal protection of

the laws and other constitutional right so as mandate an immediate response by this Court.

The above sets forth the Plaintiffs' position on whether or not a hearing on the motion for preliminary injunction is needed. Counsel for the Plaintiffs would be pleased to attend a conference with the Court to discuss this position in further detail.

Dated: May 6, 1993



JOHN J. BRUNETTI, ESQ.
Attorney for Plaintiffs
121 East Water Street
Syracuse, New York 13202
(315) 471-1212

TO: Clerk of the Court
Lawrence Williams, Esq.
County Attorney
Edward Gerber, Esq.

ONONDAGA COUNTY SHERIFF'S DEPARTMENT

WRITTEN DIRECTIVE

ORDER TYPE: Standard Operating Procedure ORDER NUMBER: SOP-C-4001-88
DATE OF ISSUE: 29 February 1988 ORDER RESCINDED:
EFFECTIVE DATE: 29 February 1988 ORDERS AMENDED: 13 November 92
CANCEL ON: AUTHORITY: Sheriff J.C. Dillon
SUBJECT: Onondaga Nation Response
INDEX REFERENCE: Reservation, Response To DISTRIBUTION: All Personnel

This order consists of the following numbered sections:

- .00 TITLE
- .01 PURPOSE
- .02 POLICY
- .03 NORMAL PATROL OPERATIONS
- .04 CALLS FOR SERVICE
- .05 FOLLOW-UP INVESTIGATIONS
- .06 ARRESTS/WARRANTS PROCEDURE
- .07 NOTIFICATIONS

.00 TITLE

S.O.P. Onondaga Nation Response

.01 PURPOSE

This order supercedes all previous orders and memoranda regarding Sheriff's Department responses to the Onondaga Nation.

.02 POLICY

The Onondaga County Sheriff's Department, in accordance with provisions of Federal Law and the Treaty of the Six Nations, in attempting to maintain the established peace and friendship with the Onondaga Nation and allow its members the free use and enjoyment of their lands, has established this standard operating procedure for response to incidents which occur on the Onondaga Nation.

.03 NORMAL PATROL OPERATIONS

- a) There shall be no normal patrol operations within the Onondaga Nation.
- b) Pursuits of non-indians may continue onto the Nation with permission of one of the Chiefs. Pursuing patrols shall proceed with extreme caution. Pursuits of Nation inhabitants shall cease at the Nation boundary. A warrant for the individual shall be obtained if possible.

- c) If an emergency response requires travel through the Nation, the patrol shall use emergency lights and drive with extreme caution. The siren shall not be used.

.04 CALLS FOR SERVICE

- a) Sheriff's Department patrols shall respond to calls for service on the Onondaga Nation. A Nation Chief, as listed in section .07, will be asked for permission to respond onto the Nation. It should be noted that at times a large number of residents may gather to observe investigations. This is a requirement of tribal law and may be cause for caution but not alarm. The Nation requires residents to observe and report all matters to the Chief of the Nation.
- b) Alarm Calls: Upon receipt of an alarm activation, patrols will respond to the Onondaga Nation line. The Chiefs will be notified for permission to continue. If permission is denied, the patrols are to clear code 9 on an M.I.R. and return to routine patrol.
- c) Accidents: PDAA's and PIAA's occurring on U.S. Route 11 at Quarry Road (Route 81 exit) or entrance will be responded to upon receipt. The Watch sergeant or lieutenant shall also be advised and an attempt made to contact the chiefs as listed.

If permission to respond onto the Nation is denied, the complainant shall be notified and asked to meet with a Deputy off the Nation to report for the complaint.

.05 FOLLOW-UP INVESTIGATIONS

A Nation Chief shall be contacted for permission before a follow-up investigation on the Nation commences. Follow-ups that are conducted off Nation land do not require any notifications.

.06 ARREST/WARRANT PROCEDURE

If a suspect is identified during an investigation, a Nation Chief may be requested to surrender the suspect for prosecution. If the Chief surrenders the suspect, he shall be processed per normal procedures. If the council decides not to surrender a suspect and the complainant still desires prosecution and all the elements of a crime are met, a warrant shall be obtained as soon as practical after a suspect has been identified. It is not necessary to obtain permission from a Nation Chief to obtain a warrant. Warrants shall be forwarded to the Warrants Investigation Unit for processing and follow-up.

.07 NOTIFICATIONS

- a) The E-911 Control Center shall, during office hours, notify the Sheriff or Undersheriff of all responses or incidents related to the Onondaga Nation that are or reasonably expected to be of extenuating circumstances. At all other times the Department Duty Commander

shall be notified and he shall be responsible for Sheriff and Undersheriff notifications. (Sheriff - hm #478-8208, page #441-6800, radio 4799) (Undersheriff - hm #487-1750, page #441-4901, radio 4798).

b) Those persons to call regarding Nation responses are:

	<u>Cell Phone</u>	<u>Home #</u>
Chief Edwin Cook	436-2891	469-1875
Chief Ollie Gibson	447-6763	469-8814
Chief Leon Shenandoah	447-8362	469-8507
Chief Paul Waterman		446-3965 (City)
		469-8505 (Daughters)
Chief Irving Powless, Jr.	447-6784	492-4210
Chief Norman Powless		469-0257
Chief Ambrose Gibson		492-6738
Chief Vince Johnson		677-7786

This list shall not be amended without the permission of the Sheriff.

PROGRAM JS39
H SUPERVISOR

ONONDAGA COUNTY SHERIFF'S DEPARTMENT
HELP RECORD INQUIRY

DATE: 04/20/93
TIME: 09:41:22

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES
00003 SA25 RESPONSE TO CALLS ON ONONDAGA INDIAN RESERVATION 03/26/93
00006 =====
00009 STANDARD OPERATING PROCEDURES AS OF 17 JUNE 1991

00012
00015 .01 POLICY

00018
00021 THE ONONDAGA COUNTY SHERIFF'S DEPT., IN ACCORDANCE WITH PROVISIONS
00024 OF FEDERAL LAW AND THE TREATY OF THE SIX NATIONS, IN ATTEMPTING TO MAIN-
00027 TAIN THE ESTABLISHED PEACE AND FRIENDSHIP WITH THE ONONDAGA NATION AND
00030 ALLOW ITS MEMBERS THE FREE USE AND ENJOYMENT OF THEIR LANDS, HAS ESTAB-
00033 LISHED THIS STANDARD OPERATING PROCEDURE FOR RESPONSE TO INCIDENTS
00036 WHICH OCCURRED ON THE ONONDAGA NATION.

00039
00042 .02 PURPOSE

00045
00046 THIS ORDER SUPERCEDES ALL PREVIOUS ORDERS AND MEMORANDA REGARDING
00048 SHERIFF'S DEPT. RESPONSES TO THE ONONDAGA NATION.
FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT
H SUPERVISOR HELP RECORD INQUIRY

DATE: 04/20/93
TIME: 09:42:00

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES
00051 .03 NORMAL PATROL OPERATIONS

00054
00057 A) THERE SHALL BE NO NORMAL PATROL OPERATIONS WITHIN THE ONONDAGA
00060 NATION.
00063 B) PURSUITS OF NON-INDIANS MAY CONTINUE ONTO THE NATION WITH PER-
00066 MISSION OF ONE OF THE CHIEFS. PURSUING PATROLS SHALL PROCEED WITH
00069 EXTREME CAUTION. PURSUITS OF NATION INHABITANTS SHALL CEASE AT
00072 THE NATION BOUNDARY. A WARRANT FOR THE INDIVIDUAL SHALL BE
00075 OBTAINED IF POSSIBLE.
00078 C) IF AN EMERGENCY RESPONSE REQUIRES TRAVEL THROUGH THE NATION,
00081 THE PATROL SHALL USE EMERGENCY LIGHTS AND DRIVE WITH EXTREME
00084 CAUTION. THE SIREN SHALL NOT BE USED.

00087
00090 .04 CALLS FOR SERVICE

00093
00096 SHERIFF'S DEPT. PATROLS SHALL RESPOND TO CALLS FOR SERVICE ON THE
00099 ONONDAGA NATION. A NATION CHIEF, AS LISTED IN SECTION .07, WILL

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT
H SUPERVISOR HELP RECORD INQUIRY

DATE: 04/20/93
TIME: 09:42:10

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES
00102 BE ASKED FOR PERMISSION TO RESPOND ONTO THE NATION. IT SHOULD BE
00105 NOTED THAT AT TIMES A LARGE NUMBER OF RESIDENTS MAY GATHER TO
00108 OBSERVE INVESTIGATIONS. THIS IS A REQUIREMENT OF TRIBAL LAW AND
00111 MAY BE CAUSE FOR CAUTION BUT NOT ALARM. THE NATION REQUIRES
00114 RESIDENTS TO OBSERVE AND REPORT ALL MATTERS TO THE CHIEF OF THE
00117 NATION.

00120
00123 IF PERMISSION TO RESPOND ONTO THE NATION IS DENIED, THE COMPLAINT-
00126 ANT SHALL BE NOTIFIED AND ASKED TO MEET WITH A DEPUTY OFF THE
00129 NATION TO REPORT THE COMPLAINT.

00132
00135 .05 FOLLOW-UP INVESTIGATIONS

00141 A NATION CHIEF SHALL BE CONTACTED FOR PERMISSION BEFORE A FOLLOW-
 00144 UP INVESTIGATION ON THE NATION COMME S. FOLLOW-UPS THAT ARE
 00147 CONDUCTED OFF NATION LAND DO NOT REQUIRE ANY NOTIFICATIONS.
 00150

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT
 H SUPERVISOR HELP RECORD INQUIRY

DATE: 04/20/93
 TIME: 09:42:16

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES

00153 .06 ARREST/WARRANT PROCEDURE

00156

00159 IF A SUSPECT IS IDENTIFIED DURING AN INVESTIGATION, A NATION CHIEF
 00162 MAY BE REQUESTED TO SURRENDER THE SUSPECT FOR PROSECUTION. IF THE
 00163 CHIEF SURRENDERS THE SUSPECT, HE SHALL BE PROCESSED PER NORMAL
 00165 PROCEDURES. IF THE COUNCIL DECIDES NOT TO SURRENDER A SUSPECT &
 00167 THE COMPLAINANT STILL DESIRES PROSECUTION AND ALL THE ELEMENTS OF
 00168 A CRIME ARE MET, A WARRANT SHALL BE OBTAINED AS SOON AS PRACTICAL
 00170 AFTER A SUSPECT HAS BEEN IDENTIFIED. IT IS NOT NECESSARY TO
 00171 OBTAIN PERMISSION FROM A NATION CHIEF TO OBTAIN A WARRANT.
 00173 WARRANTS SHALL BE FORWARDED TO THE WARRANTS INVESTIGATION UNIT FOR
 00174 PROCESSING AND FOLLOW-UP.
 00177

00180 .07 NOTIFICATIONS

00183

00186 A) COMM/INFO SHALL, DURING OFFICE HRS, NOTIFY THE SHERIFF OR UNDER-
 00189 SHERIFF OF RESPONSES OR INCIDENTS RELATED TO THE ONONDAGA NATION

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT
 H SUPERVISOR HELP RECORD INQUIRY

DATE: 04/20/93
 TIME: 09:42:23

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES

00192 THAT "ARE OR REASONABLY EXPECTED TO BE OF EXTENUATING CIR-
 00195 CUMSTANCES". AT ALL OTHER TIMES, THE DEPT. DUTY COMMANDER SHALL
 00198 BE NOTIFIED AND HE SHALL BE RESPONSIBLE FOR SHERIFF AND UNDER-
 00201 SHERIFF NOTIFICATIONS. (SHERIFF-HM#478-8208 PAGE 441-6800 RADIO
 00203 4799) UNDERSHERIFF-HM#487-1750 PAGE 441-4901 RADIO 4798)

00204

00205 B) THOSE PERSONS TO CALL REGARDING NATION RESPONSES ARE:

	CELL PHONE	HOME #
00206 CHIEF EDWIN COOK	436-2891	469-1875
00207 CHIEF OLLIE GIBSON	447-6763	469-8814
00210 CHIEF LEON SHENANDOAH	447-8362	469-8507
00213 *CHIEF PAUL WATERMAN (ILL - UNABLE TO		446-3965 (CITY)
00216 ACCEPT NOTIFICATIONS)		469-8505 (DAUGHERS)

00217

00218 CHIEF IRVING POWLESS JR. 447-6784 492-4210

00219 CHIEF NORMAN POWLESS 469-0257

00222 CHIEF AMBROSE GIBSON 492-6738

00223

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT
 H SUPERVISOR HELP RECORD INQUIRY

DATE: 04/20/93
 TIME: 09:42:28

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES

00224 CHIEF VINCE JOHNSON 677-7786

00225 THIS LIST SHALL NOT BE AMENDED WITHOUT THE PERMISSION OF THE SHERIFF.

00243

00244 C. ALARM CALLS:

00245 UPON RECEIPT OF AN ALARM ACTIVATION, PATROLS WILL RESPOND TO

00246 THE ONONDAGA NATION LINE. THE CHIEFS WILL BE NOTIFIED FOR

00247 PERMISSION TO CONTINUE. IF PERMISSION IS DENIED, THE PATROLS

00248 ARE TO CLEAR CODE 9 ON AN M.I.R. AND RETURN TO ROUTINE PATROL.

00249

00250 D. ACCIDENTS

00250 D. ACCIDENT
00251 10-79'S AND 10-80'S OCCURRING ON U.S. RT. 11 AT QUARRY ROAD (RT 81
00252 EXIT) OR ENTRANCE WILL BE RESPONDED TO UPON RECEIPT. THE WATCH
00253 SERGEANT OR LIEUTENANT SHALL ALSO BE ADVISED AND AN ATTEMPT MADE
00254 TO CONTACT THE CHIEFS AS LISTED.
00255

00256 E. DISPATCH TO INCIDENTS
00257 TWO SHERIFF'S PATROL UNITS SHALL BE DISPATCHED TO ALL CALLS

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** PRESS PA1 FOR MORE DATA. ***

PROGRAM JS39 ONONDAGA COUNTY SHERIFF'S DEPARTMENT

DATE: 04/20/93

H SUPERVISOR HELP RECORD INQUIRY

TIME: 09:42:36

AGENCY: 02 RECORD TYPE: SA25 INDIAN RESERVATION PROCEDURES
00258 ON THE RESERVATION, AND A PATROL SUPERVISOR SHALL BE
00259 NOTIFIED. THE SUPERVISOR MUST RESPOND ALSO ON SERIOUS
00260 OR POTENTIALLY DANGEROUS CALLS FOR SERVICE.
00261

00262 THE END

FUNCTION: HRI AGENCY: 02 RECORD TYPE: SA25 SEQ. NO:

** END OF DATA.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

KENNETH PAPINEAU and VERONICA PAPINEAU,
OLIVER HILL, and SUMMER ROCKWELL

CIVIL ACTION NO. 93-CV-491

Plaintiffs,

CERTIFICATE OF SERVICE
BY MAIL

vs.

JOHN DILLON, individually, and as
Sheriff of Onondaga County and
THE COUNTY OF ONONDAGA

Defendants.

The undersigned being duly sworn, deposes and says that:

Deponent is not a party to the action, is over 18 years of age
and resides at 15 Birch Road, Syracuse, New York.

That on May 7, 1993, deponent served the annexed PLAINTIFFS'
MEMORANDUM CONCERNING MOTION TO DISMISS\MOTION TO DENY PRELIMINARY
INJUNCTION by mailing a copy of same

TO: LAWRENCE R. WILLIAMS, ESQ.
County Attorney
Department of Law
421 Montgomery Street, 10th Floor
Syracuse, New York 13202

EDWARD GERBER, ESQ.
825 University Building
Syracuse, New York 13202

the address(es) designated by said individual(s) for that purpose.


Jill Arlukiewicz